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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-782

ARCHIE PELTZMAN,

Petitioner,

v.

CENTRAL GULF LINES, INC.,

Respondent.

PETITION FOR REHEARING

ARCHIE PELTZMAN,
Petitioner, Pro Se,
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Brooklyn, N. Y. 11214

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INTRODUCTION

Now comes Archie Peltzman, petitioner-appellant & respectfully petitions for rehearing of the Court's decision of Jan. 19, 1976, which denied certiorari in the above case.

This petition is based on the following specific points which were not previously elucidated sufficiently in his petition, but pleaded generally.

This petition is filed in good faith and not for delay.

ARGUMENT

The 2nd Court of Appeals decision (Pet Writ 22) affirming summary judgment of District Court is clearly erroneous & petitioner will elucidate the reasons below.

1. It was error for the District Court to foreclose argument relating to the closed shop preferential, pre-hire exclusive hiring hall operated by the union, since this evidence was related to the union security clause & since the N.L.R.B. has held in N.L.R.B. v. Pacific Maritime Assn. 172 N.L.R.B. No. 234, 1958 & Puerto Rico SS Assn. v. N.L.R.B. 281 F.2d 615 1960, that preferential hiring was illegal. (Pet Writ 17). The Law of The Case questions to be decided were not litigated because the District Judge excluded the evidence & thereby prejudiced petitioner's rights on appeal.

a. The District Court did not make any findings of fact in this case, or conclusions of law & did not rebut or even consider petitioner's arguments as to the illegality of the union security clause (Pet Writ 1V).

Petitioner argues that this claus has been outlawed since Radio Officers Union v. N. L.R.B., 347 U.S. 17, 41 ALR 2d 621, & has been interpreted by this Court (Statute involved 28 USC 158 (a) (3)) as "the provisions of the National Labor Relations Act by which it is an unfair labor practice for an employer to discriminate against employees to encourage or discourage membership in any labor organization (29 USC Sec 158 (a) (3). or for a union to cause an employer to practice such discrimination 29 USC Sec 158 (b) (2), were designed to allow employees to freely exercise their right to join unions, be good, bad or indifferent members, or abstain from joining any union without imperiling their livlihood.

(b) See the Buffalo LR 23-211, 1973-74 Dennis M Hyatt-"Employment at Will & the Law of Contracts", which contains the following case & compare, Hanna v. RCA Service Co. 336 FS 62, 1971, with the facts in petitioners case. Hanna was discharged because he had an oral contract for 18 months, but signed a document that employee or Company may terminate.

It was held plaintiff was hired for an indefinite period of time, & in absence of a contract or a statute, employment is at will & maybe terminated by either party without cause. Petitioner argues he had a permanent assignment from the union (Pet Writ 40). The petitioner had signed shipping articles on three voyages, according to the statute first promulgated in 1790, & which called for service aboard ship for one year specifying ports to be sailed to, & when the voyage ended in each instance was rehired, except that when he left for a vacation, respondent refused to rehire him without a "clearance" from the union. Petitioner argues from N.L.R.B. v. Waterman SS Corp. 309 US 206, that this Court has held that "Seamens tenure & relationship to his ship & employer are not terminated by the mere expiration of articles". See also South Atlantic SS Co. v. N.L.R.B., CA 5th 116 F.2d 480 cert den 313 US 582. See Summers-"Collective Agreements & Law of Contracts", 78 Yale LJ 525, 1969 cited by Mr. Hyatt & cases therin.

See "The Kind of Laws the Union's ought to Want" - Jenkins & Mortimer Perganon Press, 1968 - p. 78-85. A British Book which lists the laws against arbitrary dismissal in Britain & in other Countries, p. 81-84. For instance, p. 84, in the Federal Republic of Germany, the Law insists that the employer must prove the facts on which the dismissal is based.

In Italy a new law promulgated on July, 1966, described by International Labor Review issue of March, 1967, as establishing the principle that a worker may not be dismissed without valid reason.

...Valid reasons for dismissal are a notable failure of the employee to comply with his contractual obligatons or reasons relating to the production process, the organization of the work & its regular functioning. Any dismissal based on grounds of political or religious opinion, trade union membership & participation in trade union activities is null & void. The employer must show evidence of the existence of a valid reason for a dismissal....

See Clayton - "Aproperty right in employment", J. Buis. L 139, 1967, cited by Mr. Hyatt on p. 231, where author says unions would oppose statutory protection of discharge for obvious reasons of undermining union's appeal to workers for protection of job, & so suggests Judicial solution.

2. The first decision of the Court of Appeals reversed & remanded for a determination if the initiation fee was uniformly required by the union constitution & by laws, & was regurally demanded of those in his position, & if it was, then the union security clause was properly invoked, & that the contract claim must fail. (Pet Writ 31)

a. The District Judge believed Mr. Smith (union official) when he testified Homer was the only other former member who came back after the U.S. Coast Guard returned his license: (App. App. 136a) (tran 100) line 13, Mr. Smith was asked this Q. You don't remember how many similar circumstances where these fellows came to you for help, was it five, ten, fifteen?

A. Over the last 25 years? It could be 50, it could be 100, it could be 75. I don't know....

b. Petitioner argues that the Court allowed this evasive answer of a union official in charge of the union membership books, who did not allow petitioner to examine the unions memberships list to find out for himself how many similarly situated former members returned to the union.

c. In any event, Homer was allowed to pay $1,000.00 instead of $2,000.00, because Homer had a lawyer who threatned to sue the union. (Pet Writ 47).

d. The District Court's opinion (Pet Writ 44) mentions a "pre-trial" conference, but neglects to mention petitioner's statement therein (Pet. App 110) (tr 3) where he quotes from the Constitution of the American Radio Association (line 6-23) which pertains specifically to memberswhose license were revoked by the U.S. Coast Guard. The procedures that had to be taken in petitioner's & Homer's case according to this provision, were not followed.

Petitioner argues this was a clear violation of the Constitution & the Law of the Case was violated when the Court disregarded petitioner's arguments on this provision. Q... Mr. Peltzman (line 24) Now your Honor, my license was taken away, & according to this provision, there has to be a hearing, & they had to make some sort of a decision whether or not my membership should be suspended.
The Court: Well, I can't decide that now. That is just generally.
Mr. Peltzman: Your Honor, of course, I have here an Article 1X on page 24 of the same Constitution. It is....
The Court: Just mark the Constitution, because you have got to pay for all this.
End of Quote.

Petitioner argues that a "pre-trial" conference is supposed to delineate the evidence to be produced at a trial, instead, what happened was a clear violation of the Law of the Case, which mandated the District Court to consider the Constitution & by-laws of the union to see "whether the collective bargaining agreement provides Peltzman any basis for relief".

Instead of delineating any pre-trial evidence, the District Judge allowed the respondent to make a second motion for summary judgment, with the onus on the petitioner to rebut those pleadings. This was a clear violation of the Law of the Case, which mandated the District Court to look at the Constitution & the by-laws of the union: to see "if his allegations are correct, the union security clause in the collective bargaining agreement would not authorize his discharge, & other provisions, such as the non- discrimination clause would arguably provide him a contractual basis for regaining his job" (Pet Writ 30)

Petitioner argues that the rehiring provision of the bargaining agreement (fraudently removed from the exhibit by the respondent) (Pet Writ 11) mandated his rehire.

Petitioner argues that allowing only union members to regain their jobs after a vacation is a violation of the non-discriminating clause, mentioned by the Court of Appeals & of course is the reason why the respondent removed it from the ba rgaining agreement & substituted the paragraph which is not in the agreement (Pet Writ 11).

Petitioner also argues that the union discriminated against non-members by not referring them to permanent jobs unless they sailed for one year & unless they joined the union. The National Labor Relations Act forbids discrimination in the hiring & tenure of employees, related to membership or non-membership in a union.

Finally, the Bill of Rights in Landrum-Griffin forbids a union to cause the discharge of employees for any reason except non-payment of dues. Petitioner paid dues for three & one half years (App 138) (tr 133) By the Court: Q Why was all this done if he was not paying his dues? A (by Mr Smith) He was paying his dues sir. Q Why werent you insisting on his initiation fees? A He & I, shall I say, were in discussion about his initiation fee at that time.

CONCLUSION

For the aforementioned reasons, & pleadings in petitioner's Writ, the petition for rehearing should be granted.

Respectfully submitted,

Archie Peltzman

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Petitioner, Pro se